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U.S. District Court
DISTRICT OF ARIZONA (Phoenix Division)
CIVIL DOCKET FOR CASE #: 2:08-cv-00672-HRH
Internal Use Only

Esmart Group Pty Limited, et al v. Grout
Assigned to: Judge H Russel Holland
Cause: 35:145 Patent Infringement

Date Filed: 04/07/2008
Jury Demand: Plaintiff
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

Plaintiff

Esmart Group Pty Limited represented by **Kimberly Anne**

Pat. # 7,287,979
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Plaintiff

**The Fire Company Pty
Limited**

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V.

Defendant

Mike Grout

Date		
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Filed	#	Docket Text
04/07/2008	<u>1</u>	COMPLAINT. Filing fee received: \$ 350.00, receipt number 09700000000001852332, filed by Esmart Group Pty Limited. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Civil Cover Sheet)(Warshawsky, Kimberly) (Entered: 04/07/2008)
04/07/2008	<u>2</u>	Notice re Summons by Esmart Group Pty Limited re <u>1</u> Complaint (Warshawsky, Kimberly) (Entered: 04/07/2008)
04/07/2008		This case has been assigned to the Honorable H. Russel Holland. All future pleadings or documents should bear the correct case number: CV 08-672-PHX-HRH. (Entered by REK) (Entered: 04/08/2008)
04/07/2008	<u>3</u>	Notice re Magistrate Consent Form (REK) (Entered: 04/08/2008)
04/07/2008	<u>4</u>	Notice re Corporate Disclosure Statement re <u>1</u> Complaint (REK) (Entered: 04/08/2008)
04/08/2008	<u>5</u>	Summons Issued as to Mike Grout. (REK). *** IMPORTANT: You must select "Document and stamps" or "Document and comments" on the print screen in order for the court seal to appear on the summons you print. (Entered: 04/08/2008)

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

**ESMART GROUP PTY LIMITED and THE
FIRE COMPANY PTY LIMITED**

v.
MIKE GROUT,

No

COMPLAINT

(Patent Infringement)

(Jury Trial Demanded)

Plaintiffs Esmart Group Pty Limited and The Fire Company Pty Limited, by and through their attorneys, for their Complaint against Defendant Mike Grout, on information and belief, allege as follows:

THE PARTIES

1. Plaintiff Esmart Group Pty Limited ("ESMART") is a company existing under the laws of the country of Australia, with its principal place of business at 9/5 Vuko Place, Warriewood NSW 2102, Australia.

2. Plaintiff The Fire Company Pty Limited ("FIRE COMPANY") is a company existing under the laws of the country of Australia, with its principal place of business at 9/5 Vuko Place, Warriewood NSW 2102, Australia.

3. Upon information and belief, Defendant Mike Grout is a citizen of Arizona and resides at 4632 North 40th Street, Phoenix, Arizona 85018.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.*

5. This Court has subject matter jurisdiction over this action pursuant to the laws of the United States governing actions related to patents, 28 U.S.C. §§ 1331 and 1338(a).

6. Defendant conducts business in this district. This Court therefore has general personal jurisdiction over Defendant.

7. Defendant has committed acts of patent infringement in this district.

8. Upon information and belief, Defendant continues to commit acts of patent infringement in this district.

9. This Court also has specific personal jurisdiction over Defendant.

10. Venue in this judicial district is proper under 28 U.S.C. §§ 1391 (b), (c) and (d) and 1400(b) because Defendant resides in this judicial district, has committed acts of patent infringement in this district, and has conducted business in this district.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

11. Plaintiffs are engaged in, among other things, the development, manufacture, and sale of alternative fuel fireplaces that do not require flues. Homeowners, housing developers, and restaurants are common purchasers of these products.

12. On October 30, 2007, U.S. Patent No. 7,287,979 ("the '979 Patent") was duly and legally issued by the United States Patent and Trademark Office. The '979 Patent was assigned to Plaintiff ESMART, who is the owner of all right, title, and interest in and to the '979 Patent, including the right to sue for infringement and recover damages.

1 resulting therefrom. Plaintiff FIRE COMPANY is the operating company for Plaintiff
2 ESMART.

3 13. A copy of the '979 Patent is attached hereto as Exhibit A and is made a part
4 of this Complaint.

5 14. Plaintiffs are and have been selling, within this judicial district, products in
6 accordance with the '979 Patent.

7 15. Upon information and belief, Defendant is and has been selling products
8 embodying the invention claimed in the '979 Patent within the United States of America,
9 including within this judicial district.

10 16. At all relevant times, Defendant has been and continues to be the sole
11 member and owner of the Arizona limited liability company, Innovations M2, LLC
12 ("INNOVATIONS"), having a principal place of business at 4632 North 40th Street,
13 Phoenix, Arizona, 85018.

14 17. As the sole member of INNOVATIONS, Defendant has operated
15 INNOVATIONS out of his personal residence and exercised total control over all of
16 INNOVATIONS' activities.

17 **COUNT I**

18 **Infringement of United States Patent No. 7,287,979**
(35 U.S.C. §§ 1, *et seq.*)

19 18. Plaintiffs re-allege and incorporate by reference each of the allegations of
20 Paragraphs 1 through 17 as if fully set forth herein.

21 19. At all relevant times, INNOVATIONS functioned as Defendant's alter ego
22 as Defendant completely dominated and exercised total control over INNOVATIONS'
23 policies and business practices.

24 20. Among the policies and business practices implemented by Defendant were
25 INNOVATIONS' infringement of the '979 Patent.

21. The extent of Defendant's control over INNOVATIONS renders INNOVATIONS' separate corporate existence from Defendant a mere fiction.

22. Observance of this corporate fiction would effectively sanction Defendant's and INNOVATIONS' willful conduct and unjustly allow Defendant and INNOVATIONS to retain the benefits of their infringing action to the detriment of Plaintiffs.

23. Because Defendant is the alter ego of INNOVATIONS, he may be held directly, jointly and severally liable for INNOVATIONS' infringement of the '979 Patent.

24. Accordingly, INNOVATIONS' liability shield should be pierced and Defendant held directly, jointly and severally liable for INNOVATIONS' infringement of the '979 Patent.

25. Upon information and belief, all of Defendant's acts were and are intentional and willful.

26. Defendant's acts have damaged Plaintiffs and, unless enjoined, will continue to damage and cause irreparable injury to Plaintiffs.

27. Plaintiffs have no adequate remedy at law.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request judgment against Defendant as follows:

A. A Judgment that Defendant is directly and personally liable for INNOVATIONS' infringing of one or more of the claims of the '979 Patent in violation of 35 U.S.C. § 271(a);

B. A temporary, preliminary and permanent injunction enjoining Defendant, his agents, employees, licensees, and all those in privity with him, including INNOVATIONS, from infringing the '979 Patent;

C. An award of damages against Defendant sufficient to compensate Plaintiffs for the injury caused by INNOVATIONS' infringement of the '979 Patent;

D. An award trebling the damages pursuant to 35 U.S.C. § 284 based upon INNOVATIONS' willful infringement of the '979 Patent;

E. An assessment of costs, including reasonable attorneys fees pursuant to 35 U.S.C. § 285, and prejudgment interest against Defendant; and

F. Such other and further relief as this Court may deem just and proper.

RESPECTFULLY SUBMITTED this 7th day of April, 2008.

GREENBERG TRAURIG, LLP

By: /s/ Kimberly A. Warshawsky

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